SBCivil Review Appl.(Writ)No.26/2006
In
SBCivil Writ Petition No.6773/2005

Smt.Pushpa Choudhary & Anr.
v.
Shri Sanjay Chhatter & Ors.

Date of Order :: 23rd May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.C.Bhoot, for the Applicants.

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This application to review and recall judgment dated 29.3.2006 is preferred by the applicants on the ground that the Court while accepting the petition for writ being No.7773/2005 has not taken into consideration the objection raised that as to whether a person who has not approached the Court with clean hands can get any relief under Article 227 of the Constitution of India and also with a ground that the order restraining the applicants from raising construction in lawful manner cannot be said to be reasonable order, as the applicants are having valid title and are also having possession over the land in dispute specially in the circumstances that a prayer is also made by the plaintiff in the plaint for removal of construction if any made during pendency of the suit.

According to counsel for the applicants the Court while accepting the writ petition committed an error apparent on the face of record for the reasons given above and, therefore, the judgment dated 29.3.2006 is required to be recalled. It is also contended by counsel for the applicants that if the Court finds that the order was passed under a mistake and it would have not exercised jurisdiction but for some erroneous assumption which in fact did not exceed then the Court should not hesitate in recalling its order. To substantiate the contention counsel for the applicants has placed reliance upon a judgment of Hon'ble Supreme Court in the case of S.Nagaraj & Ors. v. State of Karnataka & Anr., reported in 1993 Supp(4) SCC 595.

Heard counsel for the applicants.

Whatever objections the counsel for the applicants has raised in present application were raised by counsel for present applicants at the time of hearing of the writ petition and those were taken into consideration. The Court after considering the material available on record including the order passed by the trial court as well as by the first appellate court accepted the writ petition and quashed the order passed by the first appellate court. The contentions raised by the applicants in present application to review and recall the judgment dated

29.3.2006 may be good and sufficient reasons to challenge the judgment passed by this Court dated 29.3.2006 by way of filing an appeal, if available, or by way of submitting special leave petition but are certainly not reasons sufficient to review the said judgment. The reliance placed by counsel for the applicants upon the judgment of Hon'ble Supreme Court in the case of S.Nagaraj (supra) is also not having any application in present controversy. The powers to review an order/judgment are required to be exercised within the restrictions prescribed under Order 47 CPC. This power can also be exercised on account of some mistake or error apparent on face of record for sufficient reasons but not to provide fresh hearing or arguments or for correction of an erroneous view taken earlier. In the instant matter the counsel for the applicants utterly failed to point out any error apparent on the face of record or the patent mistake warranting to review the judgment dated 29.3.2006. As such I do not find any merit in the review application.

Counsel for the applicants also made a request to direct the trial court to decide the suit expeditiously as a temporary injunction is operating against the applicant defendants. It is always expected from the court to proceed in every matter with all diligence. In the instant matter too the trial court is expected to adjudicate the suit expeditiously with all diligence.

The review application stands dismissed with observations made above.

(GOVIND MATHUR),J.

kkm/ps.